

County of Santa Clara
Department of Planning and Development
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December 17, 2012

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street 24th Floor
Sacramento, CA 95814



Subject: Comment Letter – Revised Draft Phase II Small MS4 General Permit.

Dear Ms. Townsend:

The County of Santa Clara (“County”) appreciates the opportunity to submit comments on the REVISED DRAFT GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR STORM WATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) Tentative Order (hereinafter referred to as “Revised Draft Permit”) dated November 16, 2012. The County has reviewed the Draft Permit and submits the following comments in response to the State Water Resources Control Board request to comment. The County also supports those comments that are submitted by California Stormwater Quality Association CASQA and Statewide Stormwater Coalition(SSC).

General Comments

The County appreciates that the State Water Resource Control Board (Water Board) staff incorporated our comments submitted in a letter dated July 23, 2012, and attached hereto as Attachment A, and modified many of the requirements that 1) are not within our jurisdiction to enforce; 2) would represent a significant expenditure of public resources that are not available at the local level; and (3) reducing reporting requirements. However, many of the concerns the County commented on in the 2nd Draft Phase II Small MS4 General Permit were not addressed and still remain a concern. The sections that were not addressed and still remain a concern are highlighted. The County understands that only the revision made to the Revised Draft Permit may be commented and the comments in this letter are only on those sections that have been revised. However, the County would like to be on record that the County’s comments from the prior draft have not been fully addressed.

The County is in the unique situation of operating under two distinct permits—a Phase I Permit for Region 2 and a Phase II Permit for Region 3. The County has been implementing a Stormwater Management Program since the early 1990’s in Region 2. Over the years the County has experienced

multiple permit revisions in Region 2 and has found that it takes a significant amount of time to obtain funding and to develop and implement or revise an existing program to comply with new permit requirements each time the permit is revised. This has been further complicated since the passage of Prop 218, which limits the County's authority to raise funds to support efforts to implement the permit, and utilizing existing programs and staff is not the solution. Unfortunately, County staff are all assigned to overseeing and implementing existing programs and do not have the capacity to engage in the additional stormwater activities proposed under the Revised Draft Permit.

The majority of the tasks in the Revised Draft Permit are to be completed or to begin implementation in years one and two. With limited funding and staff sources it is difficult to comply with the permit with such ambitious tasks and time line. The most ambitious tasks included **E.9.a Outfall Mapping**, **E.9.b Illicit Discharge Source/ Facility Inventory**, and **E.11.a Inventory of Permittee-owned and Operated Facilities Owned/Operated Facilities**. In order to establish appropriate funding and staffing the permit the County requests that the tasks be spread throughout the five years of the permit term.

The Revised Draft Permit also does not have an effective date. If the permit is adopted in February it will be impossible to obtain the necessary funding and implement the tasks for the first year, assuming the first year is July 1, 2013, in just 5 months. The first year should be considered March 1, 2013 through June 30, 2014.

The County is still concerned with language in the Fact Sheet Section XI-Receiving Water Limitation. This language does not allow the County to comply with water quality standards over time by using best management practices (BMPs) supplemented by the iterative process. It also has the potential to expose the County to enforcement actions despite the County's efforts to fully implement its Stormwater Program.

Specific Comments

- **E.6.b certification-** this provision requires the permittee to certify that it has and will maintain full legal authority to implement and enforce each of the requirements contained in the Order within the first year. However, this is inconsistent with requirements in E.6.a Legal Authority, which gives the permittee until the second year to review and revise relevant ordinances or other regulatory mechanisms. The County recommends revising E.6.b to be within the second year of the effective date of the permit.
- **E.9.c Field Sampling to Detect Illicit Discharges-** There needs to be some limit to how many investigations need to be performed. This requirement is similar to the Municipal Regional Stormwater NPDES Permit for San Francisco Bay Region Stressor/Source Identification requirements, which require Stress/ Source Identification Projects to be conducted when status-monitoring results trigger follow-up actions. The MRP also established a cap on how many Stress/ Source Identification Projects need to be conducted. The MRP caps the Stress/ Source Identification Projects for the Santa Clara Valley Urban Runoff Pollution Prevent Program to five projects for the permit. For San Mateo and Contra Costa permittees the cap is three and for Fairfield-Suisan and Vallejo Permittees the cap is one for the permit term. The County suggests including a cap to how many investigations need to be performed.

- **E.10.c Construction Site Inspection and Enforcement-** Clarification is needed with respect to what is meant by bi-monthly inspections. This can be interpreted to mean either: 1) perform inspections twice in one month or 2) every other month. The inspection frequency for priority sites during the rainy season should not be the same frequency as other sites with one acre or more of soil disturbance not considered a construction site during the dry season, which are both currently listed as bimonthly. The County suggests changing the language under other sites with one acre or more of soil disturbance not considered a construction site inspection frequency during the dry season to every other month instead of bimonthly.
- **E.14.a Program Effectiveness Assessment and Improvement Plan-** The reporting for each Provision requires a summary to address the relationship between the program elements activities and the Permittee's Effectiveness Assessment and Improvement Plan. However, the Effectiveness Assessment and Improvement Plan are not required to be completed until year two. The County recommends changing the reporting requirements to provide a summary to address the relationship between the program elements activities and the Permittee's Effectiveness Assessment and Improvement Plan until year three. This will allow the County to focus on developing the Effectiveness Assessment and Improvement Plan in year two and evaluate the relationship between the Plan and activities completed starting in year three.

Conclusion

In conclusion, the Revised Draft Permit has significantly improved since the first version that was released. However, there are still some requirements that: (1) need to be clarified, 2) have inconsistencies with implementation time, and 3) need to be adjusted to allow more time to comply with and implement. It is essential that the Revised Draft Permit address this concerns and create a NPDES Municipal Phase II Permit that reflects the capabilities of small cities, counties and special districts that are subject to this permit and also recognize the limitations these agencies have with regards to available staff and funding resources available.

Thank you for the opportunity to comment on the Revised Tentative Order. Please contact Clara Spaulding at (408) 299-5737 if you have questions.

Sincerely,



Ignacio Gonzalez
Director of Planning and Development

Cc:

Sylvia Gallegos- Deputy County Executive
Darrell Wong- Principle Civil Engineer
Clara Spaulding- Clean Water Coordinator
Elizabeth G. Pianca- Deputy County Counsel
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Signature

Attachment A

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July 23, 2012

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street 24th Floor
Sacramento, CA 95814

Subject: Comment Letter – 2nd Draft Phase II Small MS4 General Permit.

Dear Ms. Townsend:

The County of Santa Clara ("County") appreciates the opportunity to submit comments on the SECOND DRAFT GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR STORM WATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) Tentative Order (hereinafter referred to as "Revised Draft Permit") dated May 18, 2012. The County has reviewed the Draft Permit and submits the following comments in response to the State Water Resources Control Board request to comment. The County also supports those comments that are submitted by CASQA, BASMAA and Statewide Stormwater Coalition.

Background

For the portion of the County located in Region 3, the County is governed by a Storm Water Management Plan (SWMP), approved by the Central Coast Regional Water Quality Control Board ("CCRWQCB") in 2010. The County participates in the SWMP with the City of Gilroy and the City of Morgan Hill. For the portion of the County located in Region 2, the County is governed by a Municipal Regional Stormwater NPDES Permit ("Phase I Permit") issued by the San Francisco Bay Regional Water Quality Control Board. The County is a member of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP)

The County is in the unique situation of operating under two distinct permits—a Phase I Permit for Region 2 and a Phase II Permit for Region 3. Implementing two separate stormwater program that have conflicting regional standards is onerous on the County because it requires double reporting and double standards. Therefore, in light of limited County resources available for permit implementation and oversight, the County is most interested in developing a permit for small MS4s that provides sufficient flexibility to apply existing resources or the option to select one or the other water board requirements (the

County was given this option with implementation of a general permit for AB885) to meet the requirements of the permit.

General Comments

The County appreciates that the State Water Resource Control Board (Water Board) staff incorporated our comments and eliminated many of the requirements that 1) are not mandated by law or reflected in US Environmental Protection Agency (USEPA)-issued municipal stormwater permits; 2) would represent a significant expenditure of public resources that are not available at the local level; and (3) with a few notable exceptions (which still need to be fine tuned to avoid wasting resources), are unlikely to produce a significant return in terms of increased water quality benefits. However, some of our concerns were not addressed and still remain a concern. These concerns include requirements that are more demanding than our Phase I Permit, too prescriptive and must be further prioritized.

Requirements that are more demanding than our Phase I Permit significantly concern the County. Over the past 20 years the Phase I Permit has evolved over three to four permits, each cycle increasing and building upon the existing Phase I Permit program requirements. The Revised Draft Permit, however, seeks to implement, in just two permit cycles, some requirements that are more demanding requirements than those found in the current Phase I Permit.

Through the County's implementation of the Phase I Permit, the County has experienced the increase in program scope and cost to implement the requirements from simply developing stormwater management programs as envisioned in USEPA's regulations. Consequently, the Phase I Permit requirements have significantly increased the cost of compliance. The Revised Draft Permit includes requirements that will significantly increase the cost of stormwater management program, and with the passage of Prop 218 it is difficult for the County to secure additional revenue sources to fund and operate the stormwater management program at an increasingly higher level. Some of the more burdensome requirements include the mapping, tracking and reporting requirements for outfall mapping, facility inventory, county owned/operated facilities, inspection for facility assessments, sampling requirements for fielding sampling of outfalls, and hotspot stormwater pollution prevention plans. In addition the Revised Draft Permit claims to maximize efficiency by "leveraging existing staff," the reality is that those staff are already fully allocated, and do not have the extra time to engage in the additional stormwater activities mandated in the Revised Draft Permit. In light of the County's limited fiscal resources and in an effort to effectively maximize limited public agency resources, the County recommends Draft Permit should be modified to allow more flexibility and be focused on the capabilities of a smaller community.

The County is also concerned with language in the third paragraph of the Fact Sheet Section XI-Receiving Water Limitation, which is unnecessary, potentially misleading and inconsistent with other Water Board-issued MS4 permits. This language does not allow the County to comply with water quality standards over time by using best management

practices (BMPs) supplemented by the iterative process. It also exposes the County to enforcement actions and lawsuits even if the County is fully implementing our Stormwater Program. The County agrees and supports the comments submitted by BASMAA and request that this language be deleted.

Specific Comments

1. The Revised Draft Permit Requires Time Consuming and Costly Data Gathering and/or Tracking that Has Little or No Impact on Water Quality Benefit.

The Revised Draft Permit requires data gathering and/or tracking be tabulated in a new database format and has little or no impact on water quality outcomes. Gathering this level of information is time consuming and costly for the County. Although the County recognizes the usefulness of collecting data, the County firmly believes that the data collection needs to be prioritized or, alternatively, needs to allow more flexibility for the data tracked and collected.

- **E.9.a Outfall Mapping-** Mapping all outfalls that are County operated will take much longer than two years to complete. The County also suggests revising the permit requirement to allow the Permittee to determine its own priority areas based on the following criteria:
 - Areas with older infrastructure that is more likely to have illicit connections and a history of sewer overflows or cross-connections;
 - Industrial, commercial or mixed use areas;
 - Areas with a history of past illicit discharges;
 - Areas with a history of illegal dumping;
 - Areas with onsite sewage disposal systems;
 - Areas upstream of sensitive water bodies; and
 - Areas that drain to outfalls greater than 36 inches that directly discharge to the ocean.
- **E.9.b Illicit Discharge Source/ Facility Inventory-** the County recognizes that the Water Board did make revisions to this section on the type of facility and what information should be collected. However, the County still suggests reducing the minimum information tracked for each facility. The County suggests collecting the same information as the County's Phase I Permit requires, which includes:
 - Name and address of the business and local business operator;
 - A brief description of business activity;
 - Inspection priority and inspection frequency; and,
 - If coverage under the IGP is required.
- **E.10.a Construction site inventory-** The Water Board did remove a lot of the tracking requirements that the County has no influence over, however, there are still some elements that should be removed. These elements include:
 - E.10.a.ii.(c) the location of the project with respect to all water bodies, water bodies listed as impaired by sediment-related pollutants and water bodies for which a sediment related TMDL has been adopted and approved by USEPA,
 - E.10.a.ii.(d) Project threat to water quality,

- E.10.a.ii.(e) Current construction phase, and
 - E.10.a.ii.(g) the project start and anticipated completion date.
- **E.11.a Inventory of permitted-owned and operated facilities-** The County requests that this requirement be removed because many of the facilities listed in this section are already covered under another permit and additional tracking inventories would be duplicative. Furthermore, some of these facilities do not have activities that are located outside and, thus, would not result in any potential discharge of pollutants. By comparison, the County's Phase I Permit only requires the County to track and inspect corporation yards and pump stations making this proposed requirement more stringent than the phase I permit.
- **E.11.b Map of Permittee-owned or operated facilities-** Mapping all the County owned and operated facilities including all the storm drain systems and receiving water bodies will take a long time and will need more time than two years to complete. The County is not required to map County owned and operated facilities in our Phase I permit. The County recommends either removing this requirement or only requiring high priority facilities to be mapped.
- **E.11.c Facility assessment-** Remove the requirement to use the Center for Watershed Protection's (CWP) guide on Urban Sub-watershed and Site Reconnaissance or equivalent. The implementation level section discusses what needs to be included in the assessment.
- **E.11.h Permittee Operations and Maintenance Activities (O&M)-** *The CASQA Handbook for Municipal Operations* contains many of these O&M activities and also discusses targeted constituents and appropriate BMPs to use for each activity. Therefore the County recommends removing the requirements to develop applicable BMPs for O&M activities. In addition, O&M activities can be quick projects that last only a few days. Inspecting O&M BMPs on a quarterly basis is not practicable. The County recommends reporting annually on implementation/compliance with the CASQA handbook, this is consistent with our Phase I Permit.

2. Beyond the Phase I Program

The Phase II Permit is intended to be a less complex permit than the Phase I Permit. The following Draft Permit requirements meet or exceed the Phase I Permit requirements. The County recommends the following revisions to these requirements:

- **E.6.c Enforcement measures and tracking-** The enforcement response plan needs to allow flexibility on which enforcement actions will be taken. Not all County departments have the same range of enforcement powers. In addition, the onerous referral documentation requirements to the regional water Board need to be simplified.
- **E.7.b.1.ii.(e) Illicit discharge detection and elimination training-** The County recommends revising this requirement to say "provide training for inspectors annually", which is consistent with our Phase I Permit.
- **E.7.b.2 Construction Outreach Education-** Requiring plan reviewers and inspectors to be either QSD/QSP certified or supervised by someone that does goes beyond the requirements of the Phase I Permit. The County does agree with training staff but does

not believe staff needs to be a certified QSD/QSP to properly review plans or perform inspections.

- **E.9.b Illicit Discharge source/facility Inventory**-the County recommends removing the requirement to determine if a facilities is required to be covered under a NPDES stormwater permit. The County does not have jurisdiction over the NPDES permit and should not be responsible for this requirement.
- **E.9.c Field sampling to detect illicit discharges**- The County suggests removing the outfall sampling requirements and increasing the time between each inspection point to make this requirement less costly. The County suggests using the following language, which is consistent with our Phase I Permit:

“Permittee shall develop and implement a screening program by conducting a survey of strategic collection system points including some key major outfalls draining industrial areas once each year in dry weather conditions meaning no significant rainfall within the past 3 weeks. Routine surveys that occur on an ongoing basis during regular conveyance system inspections may be credited toward this requirement.” (Phase I Permit, page 51).

- **E.9.d Illicit Discharge Detection and Elimination Source Investigation and corrective actions**- This section includes requirements that more stringent than our Phase I permit requirements. The County recommends removing the requirement to conduct an investigation to identify and locate the source of any prohibited non-stormwater discharge within 72 hours. The County's Phase I permit does not put any constraints on when an investigation must occur. For the correction actions time line the County suggests using the following language, which is consistent with our Phase I permit for correction time:

“All violations must be corrected in a timely manner with the goal of correcting them before the next rain event but no longer than 10 business days after the violation is discovered. If more than 10 business days are required for compliance, a rational shall be recorded in the electronic database or equivalent tabular system. Immediate correction can be temporary and short if a long-term permanent correction will involve significant resources and construction time.”(Phase I Permit, page 50)

- **E.9.e Spill Response Plan**- The spill response plan will requires substantial resources to develop, update and maintain. In addition, the response for private projects the County would follow the ERP and for County discharges the County would follow best management practices or other hazardous Material Policies/Procedures. The County recommends removing these requirements.
- **E.10.b Construction Plan Review and Approval Process**- This section contains the requirement that erosion/sediment control plans include a rationale for selecting or rejecting BMPs including quantifying the expected soil loss from different BMPs. This requirement is time consuming for to develop and review. The County does not have the expertise to inform an applicant of the BMPs that can or cannot be used. The County is able to inform the applicant that construction BMPs implemented at a construction site are not effective and must install additional construction BMPs. The

County recommends removing this requirement because it will not increase the effectiveness of the BMP, ensure it is maintained, or that it is sufficient for the job. In addition, Quantifying soil loss in plan review is difficult and there is no known method to do so.

- **E.11.d Stormwater Pollution Prevention Plan-** The County recognizes that the Water Board made some significant changes to the requirements under this section. However, these requirements are still more burdensome than our Phase I Permit Requirements. The County recommends changing hotspot to corporation yard assessment and requiring an annual inspection, this is consistent with our Phase I Permit.
- **E.12.h Post construction best management practice condition assessment-** The County suggests removing BMPs used for flood control as part of the structural post-construction BMP assessment. BMPs used for flood control should only be included in the assessment if they were used to meet permit compliance. Flood control should be left to the responsibility of the local jurisdiction and FEMA.
- **E.14.b Municipal Watershed Pollutant Load Quantification-** In order for the County to perform this modeling it would require substantial staff with technical expertise that are not currently employed by the County. Under the Phase I program the County is required to perform an analysis on monitoring data but not required to calculate annual runoff, pollutant load and BMP removal Efficiency. The County recommends removing these requirements.

3. Required Under Other Programs

The NPDES municipal Stormwater Permit should not include other requirements that are already regulated under other existing programs. The County recommends the following revisions to these requirements:

- **E.11.i Incorporation of water quality and habitat enhancement features in new flood management facilities-** the County recommends removing this requirement. Flood management projects should not be regulated under the NPDES Municipal stormwater permit. It should be left to FEMA and the local agency to regulate.
- **E.11.j Landscape design and maintenance-** Many agencies have already implemented integrated pest management programs, water conservation program or landscape maintenance programs. These existing programs should be given credit under this section.

4. Comments That Need To Be Clarified

- **E.13 Water quality monitoring-** It is unclear what monitoring is required for a Permittee with a population less than 50,000 and this needs to be clarified.
- **E.12.j.ii.a.ii.1.c Planning and building document updates-** Reporting requirement sections # a and # c both require documentation submittal to demonstrate modification of applicable codes with different due dates. The County recommends that reporting section # a be revised to require submittal of codes identified that need to be modified.

Conclusion

In conclusion, the Revised Draft Permit has significantly improved since the first version that was release in 2011. However, there are still many requirements that: (1) would represent a significant expenditure of public resources that are not available at the local level; and (2) with a few notable exceptions (which still need to be fine tuned to avoid wasting resources), are unlikely to produce a significant return in terms of increased water quality benefits and (3) are more demanding then the Phase I Permit. It is essential that the Draft Permit be further revised to address water quality problems in a cost effective manner consistent with the available staff and funding resources available to the small cities, counties and special districts that are subject to the Phase II Permit.

Thank you for the opportunity to comment on the Revised Tentative Order. Please contact Clara Spaulding at (408) 299-5737 if you have questions.

Sincerely,



Ignacio Gonzalez
Director of Planning and Development

Cc:

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